

1-1 By: Madden (Senate Sponsor - Whitmire) H.B. No. 3384
1-2 (In the Senate - Received from the House May 4, 2011;
1-3 May 5, 2011, read first time and referred to Committee on Criminal
1-4 Justice; May 21, 2011, reported favorably by the following vote:
1-5 Yeas 6, Nays 0; May 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the penalties for repeat and habitual felony offenders.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. The heading to Section 12.42, Penal Code, is
1-11 amended to read as follows:

1-12 Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY
1-13 OFFENDERS ON TRIAL FOR FIRST, SECOND, OR THIRD DEGREE FELONY.

1-14 SECTION 2. Sections 12.42(a) and (b), Penal Code, are
1-15 amended to read as follows:

1-16 (a) [~~(1) If it is shown on the trial of a state jail felony~~
1-17 ~~punishable under Section 12.35(a) that the defendant has previously~~
1-18 ~~been finally convicted of two state jail felonies, on conviction~~
1-19 ~~the defendant shall be punished for a third-degree felony.~~

1-20 [~~(2) If it is shown on the trial of a state jail felony~~
1-21 ~~punishable under Section 12.35(a) that the defendant has previously~~
1-22 ~~been finally convicted of two felonies, and the second previous~~
1-23 ~~felony conviction is for an offense that occurred subsequent to the~~
1-24 ~~first previous conviction having become final, on conviction the~~
1-25 ~~defendant shall be punished for a second-degree felony.~~

1-26 [~~(3)~~] Except as provided by Subsection (c)(2), if it
1-27 is shown on the trial of a [~~state jail felony punishable under~~
1-28 ~~Section 12.35(c) or on the trial of a third-degree~~] felony of the
1-29 third degree that the defendant has previously been finally [~~once~~
1-30 ~~before~~] convicted of a felony other than a state jail felony
1-31 punishable under Section 12.35(a), on conviction the defendant [~~he~~]
1-32 shall be punished for a [~~second-degree~~] felony of the second
1-33 degree.

1-34 (b) Except as provided by Subsection (c)(2), if it is shown
1-35 on the trial of a [~~second-degree~~] felony of the second degree that
1-36 the defendant has previously been finally [~~once before~~]
1-37 convicted of a felony other than a state jail felony punishable under Section
1-38 12.35(a), on conviction the defendant [~~he~~] shall be punished for a
1-39 [~~first-degree~~] felony of the first degree.

1-40 SECTION 3. Section 12.42(c), Penal Code, is amended by
1-41 amending Subdivision (1) and adding Subdivision (5) to read as
1-42 follows:

1-43 (1) If it is shown on the trial of a [~~first-degree~~]
1-44 felony of the first degree that the defendant has previously been
1-45 finally [~~once before~~] convicted of a felony other than a state jail
1-46 felony punishable under Section 12.35(a), on conviction the
1-47 defendant [~~he~~] shall be punished by imprisonment in the Texas
1-48 Department of Criminal Justice for life, or for any term of not more
1-49 than 99 years or less than 15 years. In addition to imprisonment,
1-50 an individual may be punished by a fine not to exceed \$10,000.

1-51 (5) A previous conviction for a state jail felony
1-52 punishable under Section 12.35(a) may not be used for enhancement
1-53 purposes under Subdivision (2).

1-54 SECTION 4. Section 12.42(d), Penal Code, is amended to read
1-55 as follows:

1-56 (d) Except as provided by Subsection (c)(2), if it is shown
1-57 on the trial of a felony offense other than a state jail felony
1-58 punishable under Section 12.35(a) that the defendant has previously
1-59 been finally convicted of two felony offenses, and the second
1-60 previous felony conviction is for an offense that occurred
1-61 subsequent to the first previous conviction having become final, on
1-62 conviction the defendant [~~he~~] shall be punished by imprisonment in
1-63 the Texas Department of Criminal Justice for life, or for any term
1-64 of not more than 99 years or less than 25 years. A previous

2-1 conviction for a state jail felony punishable under Section
2-2 12.35(a) may not be used for enhancement purposes under this
2-3 subsection.

2-4 SECTION 5. Subchapter D, Chapter 12, Penal Code, is amended
2-5 by adding Section 12.425 to read as follows:

2-6 Sec. 12.425. PENALTIES FOR REPEAT AND HABITUAL FELONY
2-7 OFFENDERS ON TRIAL FOR STATE JAIL FELONY. (a) If it is shown on
2-8 the trial of a state jail felony punishable under Section 12.35(a)
2-9 that the defendant has previously been finally convicted of two
2-10 state jail felonies punishable under Section 12.35(a), on
2-11 conviction the defendant shall be punished for a felony of the third
2-12 degree.

2-13 (b) If it is shown on the trial of a state jail felony
2-14 punishable under Section 12.35(a) that the defendant has previously
2-15 been finally convicted of two felonies other than a state jail
2-16 felony punishable under Section 12.35(a), and the second previous
2-17 felony conviction is for an offense that occurred subsequent to the
2-18 first previous conviction having become final, on conviction the
2-19 defendant shall be punished for a felony of the second degree.

2-20 (c) If it is shown on the trial of a state jail felony for
2-21 which punishment may be enhanced under Section 12.35(c) that the
2-22 defendant has previously been finally convicted of a felony other
2-23 than a state jail felony punishable under Section 12.35(a), on
2-24 conviction the defendant shall be punished for a felony of the
2-25 second degree.

2-26 SECTION 6. Section 12.42(e), Penal Code, is repealed.

2-27 SECTION 7. The change in law made by this Act applies only
2-28 to an offense committed on or after the effective date of this Act.
2-29 An offense committed before the effective date of this Act is
2-30 governed by the law in effect on the date the offense was committed,
2-31 and the former law is continued in effect for that purpose. For
2-32 purposes of this section, an offense was committed before the
2-33 effective date of this Act if any element of the offense occurred
2-34 before that date.

2-35 SECTION 8. This Act takes effect September 1, 2011.

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